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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,110	07/31/2001	Allan N. Weiss	CSSK-026	3456
7590	09/14/2005		EXAMINER	
David M. Mello McDermott, Will & Emery 28 State Street Boston, MA 02109			THEIN, MARIA TERESA T	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/919,110

Applicant(s)

WEISS, ALLAN N.

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 48-71 is/are pending in the application.
- 4a) Of the above claim(s) 1-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2-1-02</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 1-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the replies filed on March 2, 2005 and June 20, 2005.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on February 1, 2002 is being considered by the examiner.

### ***Drawings***

The drawings filed on July 31, 2001 are acceptable.

### ***Claim Objections***

Claim 53 is objected to because of the following informalities:

"The method of claim 54" should be --The method of claim 48--..

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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**Claim 48, 50, 52-53, 59, 61, 63-64 and 70 are rejected under 35**

**U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,049,781 to Forrest et al.**

Regarding claims 48, 59 and 70, Forrest discloses a method of evaluating brokers or agents using a set of real estate database, the real estate databases comprising information and data relating to real estate listings and sales, the method comprising the steps of: defining a set of search criteria (col. 15, lines 51-58; col. 18, lines 27-37); accessing the set of real estate databases and obtaining therefrom as a function of the search criteria, a set of listing information for a set of properties (col. 15, line 66 – col. 16, line 13; col. 17, line 62- col. 18, line 5; col.19, lines 30-53, Figure 17); rating one or more of the listing brokers or agents based on at least one of time on market or price (col. 19, lines 30-53, Figure 17).

Regarding claims 50, 52-53, 61 and 63-64, Forrest discloses specification defining properties of interest (col. 15, lines 55-58) determining a retrospective value of sold property that represents a market value at time of listing, and calculating a percent or ratio of sale price to retrospective value (col. 17, lines 65 – col. 18, line 5; col. 19, lines 40-53, Figure 17); and determining an average time on market for each sold property (col. 19, lines 40-46, Figure 17).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 49, 51, 54-58, 60, 62, 65-69, and 71 are rejected under 35**

**U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,049,781 to Forrest et al. in view of the article "HomeRoute Launches Agent Track; Only Web Site to Rank Real Estate Agents" (HomeRoute).**

Regarding claims 49, 51, 54, 56, 60, 62, 65, 67, and 71, Forrest substantially discloses the claimed invention, however, it does not explicitly disclose ranking the one or more listing agents or brokers as a function of the rating of each of the listing agents or brokers and a list of candidate listing of brokers or agents. Forrest discloses rating brokers based on information such as sales price of homes handles by a broker and a broker's estimated sales price (col. 19, lines 47-51). Furthermore, Forrest discloses listing information of real estate broker/agent (col. 16, lines 2-7).

On the other hand, the article HomeRoute, teaches the ranking of the listing agents or brokers and a list of candidate listing of brokers or agents (whole article).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method and system of Forrest, to include the ranking of listing brokers or agents and the listing of candidates, as taught by the article, in order to maximize effectiveness and service for the consumer (the article HomeRoute, paragraphs 5-7) and making informed choices about real estate professionals (the article HomeRoute, paragraph 11).

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Regarding claims 55, 57-58, 66 and 68-69, Forrest discloses specification defining properties of interest (col. 15, lines 55-58) determining a retrospective value of sold property that represents a market value at time of listing, and calculating a percent or ratio of sale price to retrospective value (col. 17, lines 65 – col. 18, line 5; col. 19, lines 40-53, Figure 17); and determining an average time on market for each sold property (col. 19, lines 40-46, Figure 17).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,571,596 to Hastings discloses a system and method for tracking, monitoring and supporting self procuring principals in real estate transactions.

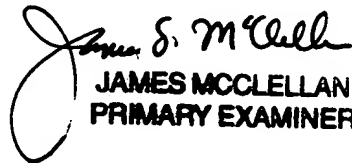
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mtot  
September 4, 2005



**JAMES MCCLELLAN**  
**PRIMARY EXAMINER**